

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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FERNANDO HERNANDEZ, KENNETH CHOW,  
BRYANT WHITE, DAVID WILLIAMS,  
MARQUIS ACKLIN, CECILIA JACKSON,  
TERESA JACKSON, MICHAEL LATTIMORE  
and JUANY GUZMAN, Each Individually, And On Behalf Of  
All Other Persons Similarly Situated,

*Plaintiffs,*

-against-

THE FRESH DIET INC.,  
LATE NIGHT EXPRESS COURIER SERVICES, INC. (FL),  
FRESH DIET EXPRESS CORP. (NY),  
THE FRESH DIET - NY INC. (NY),  
FRESH DIET GRAB & GO, INC. (FL) a/k/a  
YS CATERING HOLDINGS, INC. (FL) d/b/a  
YS CATERING, INC. (FL),  
FRESH DIET EXPRESS CORP. (FL),  
SYED HUSSAIN, Individually,  
JUDAH SCHLOSS, Individually,  
and ZAIMI DUCHMAN, Individually

*Defendants.*  
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STATE OF CONNECTICUT            )  
  ) ss:  
COUNTY OF NEW HAVEN            )

**MARQUIS ACKLIN**, being duly sworn, and subject to the penalties for perjury,  
deposes and says:

1. I am a Connecticut resident and a former driver/food delivery employee for the  
Defendants.

2. I am a named Plaintiff in this action. I submit this affidavit in support of Plaintiffs'  
motion to certify this class as a class action based on the laws of New York, with me as one of

**12 CV 4339 (ALC)(JLC)**

**AFFIDAVIT OF  
MARQUIS ACKLIN IN  
SUPPORT OF  
PLAINTIFFS' MOTION  
FOR PRELIMINARY  
CLASS ACTION  
CERTIFICATION**

the class representatives. I submit this affidavit based on my personal knowledge and I am prepared and competent to testify to the matters set forth in this declaration.

3. My job responsibilities as a driver/food delivery employee for the Defendants consisted exclusively of showing up at Fresh Diet's Brooklyn facilities, receiving instructions as to my delivery route(s), obtaining prepared meals, and personally delivering them to the Fresh Diet's customers. After completing my meal deliveries, I would have to return to the Fresh Diet's Brooklyn facilities to report back, complete required paperwork and return empty bags.

4. Throughout my employment, my work was performed under the supervision, direction and control of Mr. Syed Hussain, who was the Logistics or Delivery manager for, or on behalf of, the Fresh Diet, at the company's Brooklyn facilities.

5. At all relevant times, I regarded Mr. Hussain to be my direct supervisor and could not question his authority.

6. Throughout my employment, I often worked significantly in excess of forty (40) hours a week, yet was never paid overtime compensation of one and half times my regular rate of pay.

7. During my employment with the Defendants, I interacted with other drivers/food delivery employees on a daily basis, and know that my own experiences were typical of how these employees were supervised and compensated. Moreover, my duties, tasks and responsibilities were in all material respects the same of those drivers and/or food delivery employees.

8. In fact, I am aware and have personal knowledge that the Defendants employment many other similarly situated drivers and/or food delivery employees and routinely failed to pay them overtime compensation of one and half times their regular hourly rate for those hours worked in excess of forty (40) hours a week. In fact, my mother Cecilia Jackson, and my aunt

Theresa Jackson also were employed as drivers and/or food delivery employees by the Defendants.

9. I fully understand my responsibilities and duties as a class representative, should I be designated as such, and particularly that I would owe a duty of loyalty to the class I represent. I understand this means that I must look after the interests of the class, and will undertake my best efforts to vigorously prosecute the action on the class members' behalf and ensure that the class is treated fairly and its interests are protected. I will make myself available to participate in all activities required to conduct the case in a professional and effective manner, including but not limited to locating witnesses, documents, and evidence submitting to depositions and examinations; and attending conferences. I will not compromise the interests of class members for my own personal gain.

10. I declare under perjury that the foregoing is true and correct.

  
Marquis Acklin

Sworn to before me this  
25 day of January 2013

  
Notary Public, State of Connecticut

